

# SENATE BILL No. 19

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3-4; IC 6-3.5.

**Synopsis:** Income tax withholding. Requires wage withholding payments and estimated tax payments for nonresident aliens to be computed based on the application of not more than one personal exclusion. Requires employers to report to the department of state revenue the amount of withholdings attributable to local income taxes each time the employer remits to the department the tax that is withheld. Requires an individual filing an estimated tax return to designate the portion of the estimated tax payment that represents state income tax liability and the portion of the estimated tax payment that represents local income tax liability. Provides that if an individual requests the payor of a distribution to withhold taxes from the distribution, the individual must designate the portion of the withheld amount that represents state income tax liability and the portion of the withheld amount that represents local income tax liability. Requires the department of state revenue and the office of management and budget to develop certain reports related to local option income taxes.

**Effective:** January 1, 2009.

**Kenley**

November 20, 2007, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 19

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-3-4-4.1, AS AMENDED BY P.L.211-2007,  
2       SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2009]: Sec. 4.1. (a) Any individual required by the  
4       Internal Revenue Code to file estimated tax returns and to make  
5       payments on account of such estimated tax shall file estimated tax  
6       returns and make payments of the tax imposed by this article to the  
7       department at the time or times and in the installments as provided by  
8       Section 6654 of the Internal Revenue Code. However, **the following**  
9       **apply to estimated tax returns filed and payments made under this**  
10       **subsection:**

11       (1) In applying Section 6654 of the Internal Revenue Code for the  
12       purposes of this article, "estimated tax" means the amount which  
13       the individual estimates as the amount of the adjusted gross  
14       income tax imposed by this article for the taxable year, minus the  
15       amount which the individual estimates as the sum of any credits  
16       against the tax provided by IC 6-3-3.

17       (2) **Estimated tax for a nonresident alien (as defined in Section**



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**7701 of the Internal Revenue Code) must be computed by applying not more than one (1) exclusion under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4), regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final return for the taxable year.**

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated

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return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

(e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by IC 6-3-3-2 (repealed), shall exceed two thousand five hundred dollars (\$2,500) for its taxable year.

(f) If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), after the credit allowed by IC 6-3-3-2 (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(g) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

**(h) An individual filing an estimated tax return and making an estimated tax payment under this section must designate:**

**(1) the portion of the estimated tax payment that represents estimated state adjusted gross income tax liability; and**

**(2) the portion of the estimated tax payment that represents estimated local income tax liability under IC 6-3.5.**

**The department shall adopt guidelines and issue instructions as necessary to assist individuals in making the designations required by this subsection.**

SECTION 2. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 8. (a) Except as provided in subsection (d) or (l), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in

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withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under IC 6-3.5, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). **However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final return for the taxable year.** Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars (\$10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars (\$25);

or

(3) a three (3) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed seventy-five dollars (\$75).

An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period. If an employer files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under this section, section 8.1 of this chapter, or IC 6-2.5-6-1.

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(c) For purposes of determining whether an employee is subject to taxation under IC 6-3.5, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and  
 (2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;  
 is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

(1) the total amount of wages paid to the employer's employees;  
 (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;  
 (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;  
 (4) the amount of income tax, if any, imposed under IC 6-3.5 and deducted therefrom in accordance with this section; and  
 (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.5, withheld from the employees, on the forms prescribed by the department.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of IC 6-8.1 relating to additions to tax in case of

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delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.5, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.5, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and IC 6-3.5 within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and IC 6-3.5, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit

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state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

(1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;

(2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;

(3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and

(4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

SECTION 3. IC 6-3-4-15.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 15.7. (a) The payor of a periodic or nonperiodic distribution under an annuity, a pension, a retirement, or other deferred compensation plan, as described in Section 3405 of the Internal Revenue Code, that is paid to a resident of this state shall, upon receipt from the payee of a written request for state income tax withholding, withhold the requested amount from each payment. The request must:

(1) be dated and signed by the payee; ~~and~~

(2) specify the flat whole dollar amount to be withheld from each payment; ~~The request must also~~

**(3) designate the portion of the withheld amount that represents estimated state adjusted gross income tax liability and the portion of the withheld amount that represents estimated local income tax liability under IC 6-3.5; and**

**(4) specify the payee's name, current address, taxpayer identification number, and the contract, policy, or account number to which the request applies.**

The request shall remain in effect until the payor receives in writing

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from the payee a change in or revocation of the request. **The department shall adopt guidelines and issue instructions as necessary to assist individuals in making the designations required by subdivision (3).**

(b) The payor is not required to withhold state income tax from a payment if the amount to be withheld is less than ten dollars (\$10) or if the amount to be withheld would reduce the affected payment to less than ten dollars (\$10).

(c) The payor is responsible for custody of withheld funds, for reporting withheld funds to the state and to the payee, and for remitting withheld funds to the state in the same manner as is done for wage withholding, including utilization of federal forms and participation by Indiana in the combined Federal/State Filing Program on magnetic media.

SECTION 4. IC 6-3-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 16. (a) The department and the office of management and budget shall develop reports and procedures to ensure the income taxes under IC 6-3.5 are accurately and properly distributed to each county.**

**(b) The department and the office of management and budget shall:**

**(1) develop a monthly report that summarizes the information obtained by the department under IC 6-3-4-4.1(h), IC 6-3-4-15.7(a)(3), IC 6-3.5-1.1-18(c), IC 6-3.5-6-22(c), and IC 6-3.5-8-22(c); and**

**(2) make the monthly report available to county auditors.**

SECTION 5. IC 6-3.5-1.1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 18. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:**

- (1) definitions;**
- (2) declarations of estimated tax;**
- (3) filing of returns;**
- (4) remittances;**
- (5) incorporation of the provisions of the Internal Revenue Code;**
- (6) penalties and interest;**
- (7) exclusion of military pay credits for withholding; and**
- (8) exemptions and deductions;**

**apply to the imposition, collection, and administration of the tax imposed by this chapter.**

**(b) The provisions of IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5, and**

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IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount of withholdings attributable to each county. This report shall be submitted **to the department:**

**(1) each time the employer remits to the department the tax that is withheld; and**

**(2) annually along with the employer's annual withholding report.**

SECTION 6. IC 6-3.5-6-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 22. (a) Except as otherwise provided in subsection (b) and the other provisions of this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) deductions or exemptions from adjusted gross income;
- (5) remittances;
- (6) incorporation of the provisions of the Internal Revenue Code;
- (7) penalties and interest; and
- (8) exclusion of military pay credits for withholding;

apply to the imposition, collection, and administration of the tax imposed by this chapter.

(b) The provisions of IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount of withholdings attributable to each county. This report shall be submitted **to the department:**

**(1) each time the employer remits to the department the tax that is withheld; and**

**(2) along with the employer's other withholding report.**

SECTION 7. IC 6-3.5-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) remittances;
- (5) incorporation of the provisions of the Internal Revenue Code;
- (6) penalties and interest;
- (7) exclusion of military pay credits for withholding; and
- (8) exemptions and deductions;

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1 apply to the imposition, collection, and administration of the tax  
2 imposed by this chapter.

3 (b) The provisions of ~~IC 6-3-1-3.5(a)(6)~~, IC 6-3-3-3, IC 6-3-3-5,  
4 and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

5 (c) Notwithstanding subsections (a) and (b), each employer shall  
6 report to the department the amount of withholdings attributable to  
7 each county. This report shall be submitted **to the department:**

8 **(1) each time the employer remits to the department the tax**  
9 **that is withheld; and**

10 **(2) annually along with the employer's annual withholding report.**

11 SECTION 8. IC 6-3.5-8-22 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 22. (a) Except as  
13 otherwise provided in this chapter, all provisions of the adjusted gross  
14 income tax law (IC 6-3) concerning:

- 15 (1) definitions;
- 16 (2) declarations of estimated tax;
- 17 (3) filing of returns;
- 18 (4) remittances;
- 19 (5) incorporation of the provisions of the Internal Revenue Code;
- 20 (6) penalties and interest;
- 21 (7) exclusion of military pay credits for withholding; and
- 22 (8) exemptions and deductions;

23 apply to the imposition, collection, and administration of the municipal  
24 option income tax. The municipal option income tax is a listed tax and  
25 an income tax for purposes of IC 6-8.1.

26 (b) The provisions of IC 6-3-1-3.5(a)(5), IC 6-3-3-3, IC 6-3-3-5, and  
27 IC 6-3-5-1 do not apply to the municipal option income tax.

28 (c) Each employer shall report to the department the amount of  
29 withholdings attributable to each municipality. This report shall  
30 annually be submitted **to the department:**

31 **(1) each time the employer remits to the department the tax**  
32 **that is withheld; and**

33 **(2) with the employer's withholding report.**

34 SECTION 9. [EFFECTIVE JANUARY 1, 2009] IC 6-3-4-4.1,  
35 IC 6-3-4-8, IC 6-3-4-15.7, IC 6-3.5-1.1-18, IC 6-3.5-6-22,  
36 IC 6-3.5-7-18, and IC 6-3.5-8-22, all as amended by this act, apply  
37 only to taxable years beginning after December 31, 2008.

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